

FRANCIS ANNESLEY, Esq; Plaintiff. **HENRY DIXON, Lessee of } On a Writ of**
ROBERT DIXON, Esq; Defendant.} Error.

The CASE of the Defendant in Error, as it stands upon the special Verdict, is this.

AN Ejectment by Henry Dixon, Lessee of Robert Dixon, Esq; against Francis Annesley, Esq; of divers Messuages and Lands in Tippenan in the County of Kildare in Ireland: Upon Not Guilty pleaded, the Defendant Annesley is found Not Guilty as to ten Acres, parcel of the Premises in the Declaration mentioned; and, as to the Residue, the Jury find a Special Verdict, That before, and at the time of the Accession of the late King James the Second to the Crown, Robert Dixon, the Lessor of the Plaintiff, was seized of the Residue of the Lands mentioned in the Declaration, except those ten Acres in his Demesne as of Fee; And that King James the Second, at the time of his Accession to the Throne, or any other Person to his Use, or in Trust for him, was not seized, possessed of, or interested in any of those Lands.

Then they find the making the Act of Resumption, and several Clauses, particularly, first, The Vesting Clause, fol. 8 and 9, whereby, amongst other things, All the Honours, Mannors, Lands, &c. whereof the late King James the Second, or any in Trust for him, or to his Use, was seized or possessed, or interested in, at the time of his Accession to the Crown of England, are vested in the Trustees named in the Act, and their Heirs, Executors, and Administrators respectively, from the second Day of November, 1899. According to the several Estates and Interests which the said late King, or any in Trust for him, had in any of the Premises, at the time of his Accession to the Crown of England, to the end the same might be sold, disposed of, and apply'd by the Trustees, to the Purposes in the Act mentioned.

Then find the Claiming Clause, fol. 23. That no Person having any Estate, Right, Title, or Interest in Law or Equity, into, or out of any of the said Forfeited or Forfeitable Estates or Interests, or any other the Estates or Premises, before Feb. 13. 1688, may be in any respect whatsoever prejudiced, 'Tis Enacted, That all Persons, &c. Having any Estate, Right, Title, &c. in Law or Equity, into, out of, or upon any Honours, Mannors, Lands, &c. whatsoever, herein before vested in the said Trustees, before the 13th of Feb. 1688, by reason of any Settlement, &c. or Incumbrance affecting the said Estate, should, on, or before the 10th of August, 1700, Enter all their respective Claims and Demands thereunto: And in default thereof every such Estate, Right, Title, &c. and Incumbrance, are declared to be void; and the Estate or Estates, so as aforesaid, liable thereunto, or charged therewith, shall, from thenceforth, be freed and discharged from the same.

Then find the Clause directing the Method of Claiming, fol. 25. The words of which prescribe the Person to Claim (in the manner there set forth) the Estate, Right, &c. or Incumbrance, which he has or pretends to have into, or out of, or upon any part of the Premises; which Claims the Trustees are directed to cause to be enter'd in Books, as a perpetual Memorial thereof: And they are directed, according to their best Discretions, to hear, determine, and adjudge every such Claim, before the 25th of March 1701, and if such Claim or Demand shall not be allowed, the Party claiming, and those deriving under him, shall be for ever debarred, and without Remedy. And the Trustees in such Cases shall dispose of the Deeds and Evidences as to them shall seem meet. They find the Clause fol. 29. That the Trustees for the execution of the Powers and Authorities relating to such Estates and Claim as aforesaid, shall be, and be taken to be a Court of Record. And every Judgment, Determination, or Decree, which they shall make by Authority of this Act, shall be enter'd of Record in Books of Parchment, and be obeyed by all Persons, notwithstanding any disabilities, &c.

Then they find the Clause, fol. 38. empowering the Trustees to sell the Estates and Interests therein before vested in them for such Estate and Interests therein respectively, as is therein before vested in the said Trustees. And directing the Method which they shall follow, in making such Sales; And that upon payment of the Purchase-Money, They shall execute an Indenture of Bargain and Sale to the Buyer for such Estate, or Interest therein, as they shall have contracted to sell the same. Which Indenture is appointed to be Entred in their Books, and Inrolled in the Chancery in Ireland. And the Persons making such Purchase, and having such Conveyance and Assurance as is aforesaid, are adjudged in actual Seisin and Possession of such Parts and Parcels of the Premises as shall be so Purchased and Conveyed. And every such Purchaser shall hold the same for such Estate or Interest therein as shall be CONVEYED by the Trustees, discharged from all Arrears of Rents, and all Demands of the King, his Heirs and Successors, the Trustees their Heirs, Executors, Administrators, and Assigns, and of every other Person whatsoever, except such Claims and Demands as shall be allowed by the Trustees in the determination of such Claims as aforesaid: And freed and discharged from any Breaches of Trust which may be pretended to be committed by the said Trustees, in not strictly pursuing the Powers and Directions given by the Act. Then they find a Claim made before the Trustees by Mr. Dixon the Lessor of the Plaintiff, wherein he sets forth his Title by Letters-Patents, 30. March, 15 Car. I. made in pursuance of a Commission of Grace for Remedy of defective Titles, whereby all the Lands then in Possession of Sir Robert Dixon, or his Tenants, containing, by estimation, two thirds of the Lands of Tippenan, or thereabouts, and reputed 130 Acres of Arable, and 30 Acres of Pasture, were granted to Sir Robert and his Heirs, who enter'd and was seiz'd to the time of his Death; and then Sir William Dixon, his Son and Heir, enter'd and was seiz'd till he was dispossessed in the time of the Civil Wars: And he was, upon his Plea in the Exchequer in Ireland restored, Anno 1661, and quietly held and enjoyed the said Lands. That one Robert Sherlock was seized in Fee of five Houses, and 30 Acres of Land in Tippenan (being about one half of the remaining third) and Mortgaged the same to Robert Moore in Fee. And one Pierce Fitz Gerald was seized of the other Moiety of the third part, being a sixth of the whole. That a Moiety of the Lands were seized and sequestred as the Lands of Fitz Gerald, tho' he was, in truth, Proprietor but of a sixth part. That Robert Moore was adjudged an innocent Papist, and Decreed to the Possession of his Mortgaged Lands, and put in Possession by order of the Commissioners, and was seized in Fee.

That the said Robert Moore and James Sherlock, Son and Heir of Robert Sherlock, by Deed of Profoundment, dated 5 May 1664, and Fine upon it for 120 l. Conveyed their said Lands to Sir William Dixon, and thereby he was seized of the said Mortgaged Lands (and he was seized also in Fee of his two third Parts, as aforesaid) and died; which descended to Sir Richard Dixon, who enter'd and enjoy'd till he died in June or July 1684: And by his Death the Lands descended to the Claimant then under the Age of ten Years, and the Claimant by the now Plaintiff in Error, then his Guardian, after the Victory of the Boyne, enter'd on the same and was seized. Then sets forth, that All that part of the Town and Lands of Tippenan, which formerly belonged to Pierce Fitz Gerald, was by Letters Patents conveyed to the Duke of York and his Heirs. That Sir William Talbot the Duke of York's Commissioner, did in 1680, take upon him to Demise for 31 Years to one Quin, the half of Tippenan, containing, as was alledg'd, 209 Acres, at the Yearly Rent of 2 s. 6 d. for every Acre that Quin should hold and enjoy of the said half of Tippenan.

That Quin took upon him in 1695, to Demise the Moiety for 17 Years to Francis Annesley (the now Plaintiff) at 3 s. 8 d. per Acre, for each Acre thereof that should be enjoyed under the said Quin's Title. By colour of which Mr. Annesley (the Guardian) possessed himself of that part which was conveyed by Moore and Sherlock.

That the Fee Simple of the Premises that belonged to the D. of York, was vested in the Trustees; and thereupon, without making any Claim thereof, he averreth his Title to the Two Thirds, by virtue of the Patents before-recited, which two Thirds were in his Possession, and also to the Moiety of the other Third Conveyed by Moore and Sherlock, and then possessed by Mr. Annesley by colour of the Lease from Quin. He claimed before them the Moiety of the Third part, granted by Moore and Sherlock, as his Inheritance; and the benefit of the Lease made to Mr. Annesley, as a Trust for him, being taken when he was Guardian to the Claimant, and prayed his Claim might be allowed. Then they find the Decree and Adjudication made by the Trustees, Wherein (after mistaking his Claim, as if he had made the Title which he set forth in his Claim to the Two Thirds of the said Lands, by descent under the Letters Patents of King Charles I. part of his Claim of Estate, before them in pursuance of the Act, which was not so) they thought fit to adjudge, That the Claimant should enjoy one Moiety of the Lands of Tippenan to him and his Heirs. And that his Claim, as to any other, or further part of the said Lands should be disallowed and dismissed.

Then find the Enlargement of the Trustees time for Sale of Estates by Stat. 1. Anna, and that Francis Annesley, Esq; and six other of the Trustees for 184 l. 6 s. 7 d. $\frac{1}{4}$ paid. And for the further Sum of 100 l. allowed to the said Francis Annesley (the Plaintiff in Error) by Order of the Trustees for Service in making out their Title to the said Lands of Tippenan therein mentioned, by their Indenture of Bargain and Sale, dated 7. June 1703. did bargain and sell to the said Francis Annesley and his Heirs, All that the Moiety of the Town and Lands of Tippenan, containing by estimation, one hundred sixty one Acres with their Appurtenances. All which said Premises, the Deed says, were late parcel of the Estate of the late King James the Second, at the time of his Accession to the Crown of England, and now are in the possession of the said Francis Annesley and his Under-Tenants.

Then they find that Annesley was in possession, and Dixon enter'd upon him and made the Lease set forth in the Declaration, and Annesley re-enter'd and Ejected the Lessee. And conclude generally, if upon the whole matter the Court shall adjudge he is guilty of the Trespass and Ejectment of the said Residue of the Lands beyond the said ten Acres, they find him so; and if they shall adjudge him Not Guilty, they find him Not Guilty.

Judgment was given for the Plaintiff in Ejectment (now the Defendant in Error) after great Consideration, in the Court of Queen's-Bench in Ireland, which Judgment was affirmed after three solemn Arguments in the Court of Queen's-Bench here. And 'tis humbly prayed, that those Judgments be affirmed by this Honourable House.

For that the determination of the Trustees as to the Lands in question was Coram non Judice, nothing being subject to their Judgment or Disposition, but what was vested in them; and nothing was vested in them to be disposed of, or intended to be so, but the Estates of Forfeiting Persons, and the private Estate of the late King James; this is not pretended to be a Forfeited Estate, nor was ever part of the private Estate of King James. And if this Act should receive the construction that is contended for on the other side, to give them any power over this Estate, at the same time, it puts it into their Power to have disposed of every Estate in the Kingdom of Ireland.

J. Jekyll.
 Sr. John Brodrick.